IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2014] NZHRRT 52**

	Reference No. HRRT 009/2013
UNDER	**THE PRIVACY ACT 1993**
BETWEEN	**MICHAEL JOHN JONES**
	PLAINTIFF
AND	**WAITEMATA DISTRICT HEALTH BOARD**
	DEFENDANT

AT AUCKLAND

BEFORE:
Mr RPG Haines QC, Chairperson
Dr SJ Hickey, Member
Mr BK Neeson, Member

REPRESENTATION:
Mr TW Harvey, agent for Mr Jones
Mr A Finnie and Ms A Mark for defendant

DATE OF HEARING: 29 and 30 September 2014

DATE OF DECISION: 15 October 2014

DECISION OF TRIBUNAL

Introduction

[1] In these proceedings Mr Jones alleges that the Waitemata District Health Board (WDHB) failed to comply with Rule 7 of the Health Information Privacy Code 1994 (HIP Code). Under this Rule individuals have a right to request correction of their health information or to request that a statement of the correction sought but not made be attached to their file.

[2] In its statement of reply WDHB pleads, in essence, that its clinical record relating to Mr Jones accurately records information provided by Mr Jones and by third parties and there is therefore no obligation to correct. A statement of the corrections sought by Mr Jones has been included in the clinical record to be read alongside the original entries.

THE EVIDENCE

The preliminary events

[3] Mr Jones has an extensive medical history. For the purpose of this decision it is relevant to mention only the events which led to the two relevant interactions between him and the medical staff at Waitakere Hospital in early 2011.

[4] The evidence for the WDHB is that in the period 15 December 2010 to 2 February 2011 Mr Jones was admitted and discharged from Waitakere Hospital on six occasions and from North Shore Hospital on one occasion. On each of these admissions he complained of pain to various parts of his upper body, particularly his shoulder. Mostly he was prescribed pain relief. On the occasion of his admission to Waitakere Hospital on 29 January 2011 the primary diagnosis recorded in the Discharge & Coding Summary was "TOXACDR Accidental drug poisoning (zopiclone)". The secondary diagnosis referred to (inter alia) "TOXALCO Alcohol intoxication". The Discharge & Coding Summary for the admission to Waitakere Hospital on 1 February 2011 recorded that Mr Jones was "essentially requesting prescription for pain relief" and a script was given for such medication.

4 February 2011

[5] On 4 February 2011 at approximately 1:53pm Ms RN Nicholson of the West Intake Assessment Team received a telephone call via triage from Mr Jones' daughter. The daughter said she was calling because she was concerned about her father, advising she had received an email from him that morning which might indicate he intended taking his life. We will return shortly to the note made by Ms Nicholson of this telephone call.

[6] As a result of what she was told, Ms Nicholson advised the daughter that her referral would be logged as urgent. She was asked to contact the Police so that they could do a safety check. The daughter said she would do this.

[7] It was the intention of Ms Nicholson to either call Mr Jones on his cellphone (the number had been given by the daughter) or to wait for possible contact from the Police.

[8] A few moments later, at 1:56pm Ms Nicholson received a call from the Henderson Police who reported that on receiving a call from the daughter they had done a safety door knock. Mr Jones had seemed surprised to see the Police, did not appear distressed or upset but did say that his mood had been low and he was getting grief from his landlady. It was agreed with Ms Nicholson that Mr Jones would be brought to Waimarino, the Community Mental Health building in Henderson.

[9] It is the notes made by Ms Nicholson, or at least two aspects of those notes, which Mr Jones complains about:

> **[9.1]** [The daughter] said they [the family] have had years of this sort of behaviour – for as long as she can remember she says that her father has always been a "hypochondriac" she says that her mother believes that [Mr Jones] as a Borderline personality disorder (said that her mother is a nurse).
>
> **[9.2]** Says that her father Dr shops go's everywhere to get pain killers – lies – and makes veiled threats …

[10] These two extracts are, of course, part of a larger note made by Ms Nicholson while the phone calls were in progress or immediately thereafter.

[11] Mr Jones does not challenge the accuracy of the entire file note. His complaint relates to the two passages which have been extracted.

[12] It is therefore relevant that we record that Ms Nicholson is a Registered Comprehensive Nurse who holds a bachelors degree in Health Science. She became a Registered Nurse in 2000 and prior to that was an Enrolled Nurse trained in Palmerston North. She has worked for the WDHB for 27 years. After four years at (then) Kingseat Hospital she transferred to the Mason Clinic where she worked for 13.5 years. Prior to this she worked at North Shore Hospital in general nursing for between one and two years. She is currently a Community Mental Health Nurse employed by the WDHB in the West Intake Assessment Team, a role she has held for the past eight years. In total she has 30 years nursing experience in Auckland and elsewhere. She said that she understood the need for file notes to be both full and accurate. She had been taught "you don't write what you don't hear". She is sure she made an accurate record of what she was told by Mr Jones' daughter. In 30 years she has not previously been asked to correct her notes.

[13] Although our evaluation of the evidence follows shortly it is to be observed that Mr Jones was not a party to the telephone calls received by Ms Nicholson from the daughter and from the Police. Nor did Mr Jones call his daughter to give evidence. The evidence of Ms Nicholson is thus uncontroverted.

8 February 2011

[14] As mentioned, on 4 February 2011 Mr Jones was taken to Waimarino. There he was seen by a social worker who, after being satisfied that there was no immediate crisis, arranged for Mr Jones to see a doctor of the West Intake Assessment Team the following week, specifically on 8 February 2011.

[15] On 8 February 2011 Mr Jones arrived at Waimarino at 10am asking that his appointment be rescheduled as he had another commitment that morning. The person to whom Mr Jones spoke was Mr MJ Rayment, a Registered Comprehensive Nurse. The upshot was that the appointment was rescheduled to the following day, 9 February 2011. Immediately after speaking to Mr Jones Mr Rayment made a file note of his interaction with Mr Jones. The following phrase from that file note is complained about by Mr Jones:

> … he is not on high doses of "vitamin D13" that he was advised to take from a pain seminar he attended.

[16] Challenged as to the accuracy of this note, Mr Rayment said he made the note some seven minutes after the meeting and believes his short term memory (with which he has no problems) allowed a full and accurate note to be completed. It was his professional responsibility to record interactions correctly. The interaction in question was brief, there had not been a lot to recall and he believes that the file note is accurate. He did not accept that Mr Jones told him that it was his wife who attended the pain seminar, not him (Mr Jones).

[17] It is relevant to note that Mr Rayment became a Registered Nurse in 2000. He is currently a Registered Comprehensive Nurse and holds a bachelors degree in Nursing and a Post Graduate Certificate in Health Science. His specialist field is in acute adult mental health and he has worked in this field for 14 years. He has been employed by the WDHB for four years and worked for the WDHB in a previous role in the past. He is enrolled to undertake a Masters Degree next semester.

9 February 2011

[18] On 9 February 2011 Mr Jones was seen at Waimarino by Dr AJ Turbott, a Psychiatric Registrar working for the WDHB. The purpose of the meeting was to carry out an assessment of Mr Jones. That assessment was set out by Dr Turbott in a letter dated 10 February 2011 addressed to Mr Jones' General Practitioner. The contents of the report are not relevant to these proceedings except to the extent that two passages were subsequently amended at the request of Mr Jones:

> **[18.1]** The passage "some of these may be more in the context of his reaction to the acute pain" was changed to "some of these may be more in the context of his acute reaction to chronic pain".
>
> **[18.2]** The reference to an invalids benefit was changed to "sickness benefit".

The response by Mr Jones

[19] Mr Jones told the Tribunal that at the relevant time he had found it increasingly difficult to cope with the unrelenting pain with which he is afflicted. It had been present from the time he woke up in the morning until he fell asleep at night. The combination of severe pain, medication and some alcohol resulted in impaired judgment, nightmares and hallucinations at night. He was forgetting what he had taken and assumed that if he was still in a lot of pain, he had not taken anything and would take more. He was also experiencing memory lapses. Just prior to his daughter becoming involved on 4 February 2011 by calling the Police out of concern for his safety he was severely depressed, anxious and despondent due to the pain. Had it not been for the severe, unrelenting pain he would not have required any intervention.

[20] Mr Jones further told the Tribunal he finds outrageous any suggestion that he is a hypochondriac and that he manipulates doctors to obtain pain medication. He has tendered a letter from his General Practitioner which states (inter alia) that, to the best of the GP's knowledge, there are no alerts regarding doctor shopping by Mr Jones and that he has not witnessed any evidence to suggest that Mr Jones has ever sought prescription medications for any illicit purpose.

[21] Mr Jones also says that he has never attended a pain management seminar or attended any specialist pain clinic. What he did convey to Mr Rayment was that Mr Jones' ex-wife attended a pain management seminar by Dr J Bartley who had previously operated on Mr Jones as an ENT surgeon. Mr Jones' ex-wife is a Rehabilitation Nurse and it was in the context of her professional education that she had attended Dr Bartley's seminar at which he touched on the efficacy of Vitamin D13 in high dosage in the treatment of chronic pain. Mr Jones says that he did not tell any member of the Waimarino staff that he had been advised to undergo Vitamin D13 therapy at a pain seminar.

The request for correction

[22] At the request of Mr Jones the WDHB by letter dated 16 January 2013 provided a copy of the West Two Community Mental Health file.

[23] By letter dated 26 January 2013 Mr Jones disputed the accuracy of some of the file notes and in particular requested correction not only of the two passages from Dr Turbott's report but also:

> **[23.1]** That part of the file note made by Ms Nicholson on 4 February 2011 being:

> **[23.1.1]** … she says that her father has always been a "hypochondriac" she says that her mother believes that [Mr Jones] as a Borderline personality disorder (said that her mother is a nurse).
>
> **[23.1.2]** Says that her father Dr shops go's everywhere to get painkillers – lies – and makes veiled threats.

[23.2] That part of the file note made by Mr Rayment on 8 February 2011 that records:

> … He is not on high doses of "vitamin D13" that he was advised to take from a pain seminar he attended.

[24] Mr Jones also required a copy of a report dated 2 July 1996 by Mr Ted Mason, consulting psychologist be placed on the WDHB file "to balance opinion and perhaps the writers of my notes should read that report before they can honestly say that the information on my file is an accurate record of my psychological status".

Correction – steps taken by Waitemata District Health Board

[25] Being of the view that the file notes accurately record what was said to Ms Nicholson and Mr Rayment respectively, the WDHB by letter dated 21 February 2013 responded that it was not possible to remove or change the entries but Mr Jones' letter had been scanned into the clinical records system and in addition the WDHB had entered a highlighted note into the file alerting the reader to the existence of Mr Jones' letter warning that it should be read in conjunction with the WDHB notes. With regard to the request that a copy of Mr Mason's report be added to the file, the WDHB advised that it would be happy to include the letter if Mr Jones sent a copy. In addition, because Mr Jones had indicated he felt a repeat assessment by Waimarino might provide an opportunity to rectify any impressions which could impact negatively on the perceptions of future clinicians providing assessment, arrangements would be made for him to be seen by a Consultant Psychiatrist.

[26] The "highlighted note" referred to was produced in evidence as Exhibit A. The relevant part is in red and underlined. It reads:

> Letter from Mr Jones scanned into Documents section of HCC. Mr Jones has raised several issues which he states have been incorrectly documented. Please read this letter in conjunction with the existing clinical notes from WDHB.

[27] The evidence establishes that entries in red (and entries in red which have been underlined) are rare and that the highlighted note stands out sharply on the file.

[28] Indeed, when Mr Jones took up the offer to be seen by a Consultant Psychiatrist at Waimarino, the report by that psychiatrist dated 5 April 2013 records that he (the psychiatrist) had read Mr Jones' complaint letter prior to the meeting with Mr Jones. The highlighted note obviously works.

Credibility assessment

[29] Mr Jones has challenged both Ms Nicholson and Mr Rayment over the accuracy of their clinical notes and there is a conflict of evidence between Mr Jones and Mr Rayment as to what was said at their brief meeting on 8 February 2011.

[30] In relation to Ms Nicholson, she is the only party to the daughter's telephone call to give evidence before the Tribunal. The fact that the daughter did not give evidence is not mentioned as a criticism. It is simply a statement of fact. In the result, Ms Nicholson's account of the telephone call is in that sense unchallenged. As to whether

Ms Nicholson made an accurate note of what the daughter said, we are left in no doubt whatsoever that she did. Ms Nicolson is a nurse of long experience who over 30 years has worked in an environment where she knows and understands that clinical notes must be both full and accurate. Having seen and heard her we accept that her professional standards are high and in addition, her notes were made virtually contemporaneously with the telephone call from the daughter. In these circumstances we accept her note is an accurate record of what she was told by the daughter on 4 February 2011.

[31] In relation to Mr Rayment, he too impressed as a careful and conscientious medical professional who similarly understands the need for clinical notes to full and accurate. He also made his note almost immediately after his brief interaction with Mr Jones. Mr Jones made no contemporaneous note. Without hesitation we accept the evidence by Mr Rayment that his file note is a true and accurate record of what Mr Jones said on 8 February 2011.

[32] By contrast we found Mr Jones over-confident of his ability to remember accurately events in the past, particularly his exchange with Mr Rayment, giving little recognition to the effect of the pain medication on his perception and recollection of events in 2011. He also tended to minimise his own responsibility in the events leading to the daughter's telephone call to Waimarino, blaming the WDHB for the breakdown of his relationship with the daughter, a claim which we do not accept. As would have been made clear from the Tribunal's questions during the hearing, we have received no satisfactory explanation why the recording of the statements made by the daughter on 4 February 2011 and the subsequent discovery by Mr Jones of the existence of that record places on WDHB a responsibility for any breakdown in the family relationships.

[33] In the result this case is to be determined on the evidence given by Ms Nicholson and Mr Rayment. There was no challenge by Mr Jones to the credibility of Dr Turbott and it is noted that as there was no challenge to the evidence of Dr Ang, his evidence was admitted by consent.

PRINCIPLE 7 OF THE HEALTH INFORMATION PRIVACY CODE 1994

The meaning of "health information"

[34] The HIP Code, issued under Part 6 of the Privacy Act 1993, applies to "health information" about an identifiable individual that is held by a "health agency". "Health information", for these purposes, is defined very broadly in clause 4(1) of the HIP Code:

> **4 APPLICATION OF CODE**
>
> (1) This code applies to the following information or classes of information about an identifiable individual:
> (a) information about the health of that individual, including his or her medical history; or
> (b) information about any disabilities that individual has, or has had; or
> (c) information about any health services or disability services that are being provided, or have been provided, to that individual; or
> (d) information provided by that individual in connection with the donation, by that individual, of any body part or any bodily substance of that individual or derived from the testing or examination of any body part, or any bodily substance of that individual; or
> (e) information about that individual which is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.

[35] As observed by John Dawson in "Privacy and Disclosure of Health Information" in Skegg and Paterson (eds) *Medical Law in New Zealand* (Brookers, Wellington, 2006) at [10.2.5], the catch-all provision in clause 4(1)(e), gives "health information" a very broad

meaning in this context. It is not limited to information provided to a health professional by a patient. Information about patients collected from other sources is also covered. The information need not even bear directly on a person's health or on health services they have received, provided it concerns an identifiable individual and was collected in the course of, or incidental to, the provision of a health or disability service. In the present case it was not disputed that the information in question is health information.

The correction of health information

[36] The correction of health information is governed by Rule 7 of the HIP Code. It provides that the subject of health information may request its correction, and may request that his or her statement about its correctness be attached to the health record. When such request is made, the agency must take reasonable steps to ensure the information it holds is "accurate, up to date, complete and not misleading", in light of the purposes for which the information may be used:

> **Rule 7**
>
> (1) Where a health agency holds health information, the individual concerned is entitled:
> (a) to request correction of the information; and
> (b) to request that there be attached to the information a statement of the correction sought but not made.
> (2) A health agency that holds health information must, if so requested or on its own initiative, take such steps (if any) to correct the information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, it is accurate, up to date, complete, and not misleading.
> (3) Where an agency that holds health information is not willing to correct the information in accordance with such a request, the agency must, if so requested, take such steps (if any) as are reasonable to attach to the information, in such a manner that it will always be read with the information, any statement provided by the individual of the correction sought.
> (4) Where the agency has taken steps under subrule (2) or (3), the agency must, if reasonably practicable, inform each person or body or agency to whom the health information has been disclosed of those steps.
> (5) Where an agency receives a request made under subrule (1), the agency must inform the individual concerned of the action taken as a result of the request.
> (6) The application of this rule is subject to the provisions of Part 5 of the Act (which sets out procedural provisions relating to correction of information).
> (7) This rule applies to health information obtained before or after the commencement of this code.
>
> Note: An action is not a breach of this rule if it is authorised or required by or under law: Privacy Act 1993, section 7(4)

[37] It is to be noted that the person to whom the information relates does not have a right to have a correction made of their choice. The "entitlement" is to **request** correction of the information and to **request** that there be attached to the information a statement of the correction sought but not made.

[38] The agency must on such request correct information only if it is in the circumstances "reasonable" to ensure that, having regard to the purposes for which the information may lawfully be used, it is accurate, up to date, complete and not misleading. The key phrase is "in the circumstances, reasonable to ensure". As Mr Dawson at op cit [10.6.5] observes, the agency must consider the request and must respond in a reasonable manner. But if the agency considers, on reasonable grounds, that the existing data is correct, no changes need be made.

[39] As stated in *Plumtree v Attorney-General* [2002] NZHRRT 10 at [145] the purpose of Principle 7(3) of the analogous information privacy principles is to create a middle ground between "correction" and "no correction" so that there is a way in which individuals and agencies can, in effect, agree to differ. See also *Henderson v*

Commissioner of Inland Revenue [2004] NZHRRT 27 at [58]. In *MacDonald v Healthcare Hawkes Bay* [2000] NZCRT 35 it was said:

> The information at issue is a doctor's report of part of a conversation he had with the parents of the plaintiff. It is information which in large part is subjective. Information which has some subjective content will always be harder to correct than that which is neutral in tone or objectively able to be verified because subjective information is less open to objective analysis. What is true and accurate for one participant in a conversation may well not be so for another. We think this is the reason why agencies have the ability pursuant to IPP7 to choose whether to correct information or attach a statement of correction to it. A statement of correction enables more than one perspective of an incident or a conversation to be included with personal information held by the agency.

[40] It is not a requirement of the information privacy principles or of the HIP Code that before an agency holds health information it must first be established that that information is factually correct. The information may well be in the form of an opinion or comment "about" the individual which may at some time become relevant in the clinical context alongside other health information. As all the medical witnesses testified to the Tribunal, best medical practice requires account to be taken of a wide range of sources when making clinical decisions. The fact that a family member has expressed a certain opinion about an individual may in some circumstances have no relevance at all but in others might become a factor to be taken into account. The Commentary to Rule 7 explains the point in the following terms:

> Reasons for refusing a request for correction might include that:
> - the health agency is satisfied the information is correct;
> - the information is clearly identified as opinion material and correctly represents the opinion held at the time (eg. an assessment of an individual's risk of suicide or a diagnosis) – removing or changing the earlier information would leave a course of action unexplained; and
> - the information was believed to be correct at the time it was made, circumstances have changed, and there is no means of now verifying its accuracy.

[41] What Mr Jones appears to have misunderstood is that it is not a requirement that an agency hold only information that is factually correct. What is "factually correct" may well be a highly contestable issue and it would also exclude opinion and comment. Even assuming that the determination of factual correctness is a practicable exercise (which we doubt), such determination would result in disagreement, delay, expense and the risk of clinical notes which are of little help or which are potentially misleading.

[42] No doubt it is for these reasons that Rule 7 of the HIP Code makes provision for the attachment of a statement of the correction sought but not made.

Application of the law to the facts

[43] Of all of the information recorded by Ms Nicholson and Mr Rayment, only three short excerpts are challenged by Mr Jones. We have found as a matter of fact that those excerpts accurately record what was said to Ms Nicolson and Mr Rayment by Mr Jones' daughter and by Mr Jones himself respectively. The notes being accurate we can see no basis whatsoever for holding that the WDHB ought to have "corrected" the information.

[44] As Mr Jones appears to have a strong feeling of injustice, it is necessary to add that such feeling is objectively without justification given that the WDHB has gone out of its way not only to discharge its obligations under Rule 7 of the HIP Code as written, but also to observe its spirit. We refer here to:

> **[44.1]** The entering into the records of a note highlighted in red advising that the letter from Mr Jones dated 26 January 2013 has raised issues which he states

have been incorrectly documented and the clinician is asked to read the letter in conjunction with the existing clinical notes from WDHB.

[44.2] The fact that WDHB has similarly entered into the clinical records system the report dated 2 July 1996 from Mr Mason, Consultant Psychologist. This notwithstanding that when the WDHB offered to add the report Mr Jones was asked to forward a copy. This he failed to do because he "never got around to it" and it involved "a lot of photocopying". He says it was partly an oversight and partly due to the fact that whatever he said would be taken as "just another disgruntled patient".

[44.3] The rewording of two passages in Dr Turbott's report dated 10 February 2011.

[44.4] The offer to Mr Jones of the opportunity to see a Consultant Psychiatrist for a repeat assessment which would provide an opportunity to rectify any impressions which may have impacted negatively on the perceptions of future clinicians providing assessment. This offer was taken up by Mr Jones.

CONCLUSION

[45] For the reasons given we find, without hesitation, that the WDHB has not been shown to be in breach of Rule 7 of the HIP Code. To the contrary, it has been shown to have complied with both the letter and the spirit of Rule 7. There is no basis (and never has been) for the complaint by Mr Jones that the rule has been breached.

[46] It follows that these proceedings must be dismissed.

Whether non-publication order to be made

[47] At the close of the hearing Mr Jones sought an order prohibiting publication of his name.

[48] The jurisdiction of the Tribunal to make a non-publication order is found in s 107(3) of the Human Rights Act 1993:

> (3) Where the Tribunal is satisfied that it is desirable to do so, the Tribunal may, of its own motion or on the application of any party to the proceedings,—
>
> (a) order that any hearing held by it be heard in private, either as to the whole or any portion thereof:
>
> (b) make an order prohibiting the publication of any report or account of the evidence or other proceedings in any proceedings before it (whether heard in public or in private) either as to the whole or any portion thereof:
>
> (c) make an order prohibiting the publication of the whole or part of any books or documents produced at any hearing of the Tribunal.

[49] The granting of name suppression is a discretionary matter for the court or tribunal: *R v Liddell* [1995] 1 NZLR 538 (CA). The starting point when considering suppression orders is the presumption of open judicial proceedings, freedom of speech (as allowed by s 14 of the New Zealand Bill of Rights Act 1990) and the right of the media to report. However, in *Liddell* it was recognised at 547 that the jurisdiction to suppress identity can properly be exercised where the damage caused by publicity would plainly outweigh any genuine public interest. The decision in *Lewis v Wilson & Horton* [2000] 3 NZLR 546 (CA) underlines that in determining whether non-publication orders should be granted, the court or tribunal must identify and weigh the interests of both the public and the individual seeking publication. In *Peters v Birnie* [2010] NZAR 494 at [25] Asher J stated that given the paramount principle of open justice, it is necessary for a person seeking confidentiality orders to point to some public interest such as particular circumstances

relating to the privacy of an individual, to justify a departure from the open justice process. A party seeking to justify a confidentiality order will generally have to show specific adverse consequences that are exceptional.

[50] The submission for Mr Jones, is, in essence, that during the hearing of the case disclosure was made of some aspects of his health information and of his relationship with his daughter and ex-wife. That is indeed the case but he failed to show any specific adverse consequences that are exceptional. Furthermore, in drafting this decision we have confined to a minimum the disclosure of Mr Jones' personal information and have refrained from referring to or discussing certain matters of potential relevance to credibility. We note also that the daughter and ex-wife do not use Mr Jones' surname. Such personal information as does remain falls well short of establishing justification for departing from the open justice process.

[51] As best we understand the submissions made by Mr Jones, he does not claim that he will be prejudiced by disclosure of the personal information recorded in this decision. It is more an issue of embarrassment. However, it is well-established that more than embarrassment or detriment to reputation must be shown before a court or tribunal will intervene. See *Peters v Birnie* at [30] and reference should also be made to *Haydock v Gilligan Sheppard* HC Auckland, CIV-2007-404-2929, 11 September 2008 at [31] where Harrison J stated:

> [31] … The legislature and the Courts are well aware that the hearing of a case in public requires individuals to give evidence which may be embarrassing or humiliating. Nevertheless, the public interest, demanding the fair and efficient administration of justice, consistently trumps any personal features. A party who chooses to initiate a hearing which Parliament stipulates is to be held in public must take all the unpalatable consequences, not only of an adverse substantive decision but also on publicity and costs.
>
> [32] The last word on this subject belongs, as Ms Grace points out, to Lord Woolf CJ in *R v Legal Aid Board, ex parte Kaim Todner* [1999] QB 966 at 978 as follows:
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> > ... It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule.

[52] In our view no persuasive case for name suppression has been made out by Mr Jones. That being the case, the presumption of open judicial proceedings and the right of the media to report must prevail. The public interest in open judicial proceedings is on these facts of greater weight than Mr Jones' personal interests.

Costs

[53] Costs are reserved. Any application for costs will be dealt with according to the following timetable:

> **[53.1]** The WDHB is to file its submissions within 14 days after the date of this decision. The submissions for Mr Jones are to be filed within a further 14 days with a right of reply by the WDHB within 7 days after that.

[53.2] The Tribunal will then determine the issue on the basis of the written submissions without any further oral hearing.

[53.3] In case it should prove necessary we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

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Mr RPG Haines QC	**Dr SJ Hickey**	**Mr BK Neeson**
Chairperson	**Member**	**Member**